made to prosecute a further appeal to the Court of Appeals on behalf of the defendant brokers. In an action on a similar guaranty issued by the same firm to the First National Bank of Ann Arbor, Michigan, it was decided that there was a presumption of implied authority in John Farson, Sr., to guarantee the bonds for the firm and that the burden was upon the defendants to give evidence as to whether the guaranty was within the ordinary manner of carrying on the business. 178 App. Div. 135; 165 N. Y. Supp. 119. This finding was, however, reversed and a new trial ordered by the Court of Appeals, 226 N. Y. 218, which held that the burden of proof is upon the purchaser to show that the partner signing the guaranty had authority so to do. This is of course in accord with the well-established rule that the burden of proof rests on the one asserting the fact. *Sibley* v. *American Exchange Bank,* 97 Ga. 138, but it was suggested by the lower court that inasmuch as the firm was in this instance promoting a sale of its own property this in itself "was sufficient to cast upon the defendants the burden of rebutting the presumption arising from the evidence and the pleadings." *Johnston* v. *Trask,* 116 N. Y. 143. This argument is, however, purely academic since the decision of the Court of Appeals, and, in the instant case, the plaintiff has taken upon himself the burden of proof and sustains it by giving evidence that the firm was in this instance promoting a sale of its own property, as in the previous case, together with other evidence which it is to be hoped will satisfy the Court of Appeals. The ruling as to lack of error on the third point seems to be sound, as the evidence admitted "had a material bearing on the issues in this action."

PLEADING—ADMISSION OF LIABILITY FOR PART NOT BINDING UNLESS PLAINTIFF TAKES JUDGMENT BEFORE TRIAL FOR AMOUNT ADMITTED.—In an action of assumpsit by a sales agent against an automobile corporation for $1392.53 for commissions alleged to be due the plaintiff, the defendant corporation filed a plea of non assumpsit and an affidavit in which it admitted $63.33 of the claim to be due the plaintiff for services performed, but disputed the balance. The plaintiff proceeded to trial for the recovery of the whole amount. The defendant moved for a directed verdict in its favor, but the plaintiff contended that a verdict could not be directed in favor of the defendant for the reason that it had admitted, on the pleadings, a part of the claim. *Held,* admission of liability for part of the claim was not binding upon the defendant because the plaintiff failed to take judgment before trial for the amount admitted. *Standard Motor Co.* v. *Shockey* (Md., 1921), 114 Atl. 869.

It is a universal rule that pleadings containing admissions, which are signed or sworn to by the pleader, are binding upon him in the action wherein they are filed without being specially offered as evidence, being regarded as before the court for all legitimate purposes. 21 R. C. L., par. 120, and cases cited. "An admission in pleading dispenses with proof, and is equivalent to proof." *Connecticut Insane Hospital* v. *Brookfield,* 69 Conn. 1. "It is never necessary to prove what is admitted in the pleadings."

Smith v. *Kaufman*, 100 Ala. 408. In *Roy* v. *King's Estate*, 55 Mont. 567, the plaintiff brought suit for $300. Defendant filed a general denial except as to $100 which he admitted he owed plaintiff. Plaintiff introduced evidence and was nonsuited. Upon appeal it was held that plaintiff should have received judgment for $100, for the admission in the answer that part of the plaintiff's claim was justly due entitled plaintiff to judgment for that amount, without regard to the value of the evidence as to the balance. The principal case is supported by prior decisions of the same court, but it is clearly out of line with the weight of authority which permits the trial to proceed with the admissions in the pleading, and gives the plaintiff judgment for the amount admitted, leaving the question as to the balance to the jury.

PLEADING—EQUITABLE REPLY TO LEGAL DEFENSE.—A federal statute (ACT OF MARCH 3, 1915; JUD. CODE, § 274b; COM. ST., § 1251b) provides "that in all actions at law equitable defenses may be interposed by answer, plea or replication without the necessity of filing a bill on the equity side of the court." Plaintiff sued at law on a contract for commissions, to which the defendant pleaded a settlement and release. To this the plaintiff replied fraud by defendant in procuring the release, and tendered back the amount received in the settlement. On a demurrer to this replication defendant urged that it was not authorized and the fraud should have been availed of by a bill in equity to set aside the release. *Held*, that the replication was good. *Plews* v. *Burrage* (C. C. A., 1st Cir., 1921), 274 Fed. 881.

This opinion seems to be in accordance with the very language of the statute above quoted. But there is another sentence in the same section which provides that "in case affirmative relief is prayed in such answer or plea the plaintiff may file a replication." If this means that no replication can be filed unless the plea or answer prays affirmative relief, then such a replication as that in the principal case is unauthorized because the answer there contained a mere defense. In *Keatley* v. *U. S. Trust Co.* (C. C. A., 2nd Cir., 1918), 249 Fed. 296, the court took this latter view and held that a replication exactly like the one in the principal case was bad. We thus have two opposite decisions on the same question, due to the emphasizing of two different features of the same statute. The *Plews* case emphasized the liberal provision, which was intended to prevent circuity of action. The *Keatley* case emphasized the conservative provision which impliedly restricted the use of a replication to cases where affirmative relief was asked for in the plea or answer. North Carolina, in the CODE of 1883, § 245, gave a defendant the right "to set forth by answer as many defenses and counterclaims as he may have, whether they be such as have been theretofore denominated legal, equitable, or both," and a plaintiff in his reply "to allege * * * any new matter not inconsistent with the complaint, constituting a defense to new matter in the answer." This has been held broad enough to allow an equitable reply to a legal defense, conformably to the spirit of procedural reform manifested in codes of pleading. *Bean* v. *R. R.*, 107 N. C.